



Santa Clara Law Review

Volume 12 | Number 3

Article 3

1-1-1972

Birth Control for Premature Subdivisions - A Legislative Pill

Chilton H. Lee

Follow this and additional works at: <http://digitalcommons.law.scu.edu/lawreview>

 Part of the [Law Commons](#)

Recommended Citation

Chilton H. Lee, Comment, *Birth Control for Premature Subdivisions - A Legislative Pill*, 12 SANTA CLARA LAWYER 523 (1972).
Available at: <http://digitalcommons.law.scu.edu/lawreview/vol12/iss3/3>

This Comment is brought to you for free and open access by the Journals at Santa Clara Law Digital Commons. It has been accepted for inclusion in Santa Clara Law Review by an authorized administrator of Santa Clara Law Digital Commons. For more information, please contact sculawlibrarian@gmail.com.

COMMENTS

BIRTH CONTROL FOR PREMATURE SUBDIVISIONS—A LEGISLATIVE PILL

California's great land rush in second home subdivisions¹ has been a plague upon the Sierra foothill and desert counties.² It has been alleged that the adverse economic impact of these subdivisions on rural areas has been surpassed only by the environmental havoc they have caused.³ However, the land rush phenomenon has not been unique to California.⁴ The proliferation of these subdivisions in recent years has prompted several states, most notably Maine and Vermont,⁵ to enact legislation to control their growth.⁶ The 1971 California Legislature also attempted to deal with this situation by passage of Assembly Bills 1301⁷ and 1303.⁸ This comment analyzes the need for state legislation,⁹ critiques California's 1971 legislation, compares it with existing and proposed legislation in other states, and offers a proposal for further legislative action.

¹ A "second home (vacation home) subdivision" is one class of "recreational subdivision." A "recreational subdivision" has been defined as one that is designed around a recreational amenity or amenities such as a natural or artificial lake, golf course and country club, cabaña club, or equestrian facility with riding and hiking trails. This definition includes recreationally oriented subdivisions aimed at the retirement home and permanent home markets as well as the second home market. It also can include new cities such as Lake Havasu. See Krueger, *Recreational-Oriented Land Developments*, 3 REAL PROP., PROB. & TRUST J. 353 (1969). For the purposes of this comment, the term "recreational subdivision" shall include only those aimed primarily at the second home market. Therefore, the terms "second home subdivision" and "recreational subdivision" will be used interchangeably. These "second home subdivisions" are marketed on an unimproved lot basis and are generally remote from existing urban areas rather than being located on the urban fringe. Examples of "second home subdivisions" located in California include: Brooktrails, California Valley, Kingswood Estates, Lake Don Pedro, Lake of the Pines, Lake Wildwood, Palm Springs Panorama, Pine Mountain Lake, Shelter Cove, and Tahoe-Donner.

² Loma Prieta, Dec. 1971, at 2, col. 2.

³ *Id.* See also text accompanying notes 20-33, *infra*.

⁴ See, e.g., *Now a Land Rush in the West as City Folks Stake Claims*, U.S. NEWS AND WORLD REPORT, July 19, 1971, at 32; *Peddling the Great West*, SATURDAY REVIEW, Sept. 4, 1971, at 48. The former article discusses land subdivision sales in Idaho, Montana, Texas, Washington, and Wyoming while the latter discusses land sales in Arizona.

⁵ ME. REV. STAT. ANN. tit. 38, § 481 *et seq.* (Supp. 1970); Vt. Acts, 1969 Adj. Sess., No. 250, at 237 (1970); See also text accompanying notes 89-97, *infra*.

⁶ E. Haskell, *Managing the Environment: Nine States Look for New Answers* 33 (April 1971).

⁷ Cal. Stats., 1971, ch. 1446, at — (West Cal. Leg. Serv. 1971).

⁸ A.B. 1303, 1971 Leg., Reg. Sess. (1971). A.B. 1303 was vetoed by Governor Reagan on Nov. 12, 1971. ASSEMBLY WEEKLY HISTORY, Nov. 24, 1971.

⁹ A discussion of partitions of real property not classified as "subdivisions" under the Subdivision Map Act, CAL. BUS. & PROF. CODE § 11535 (West Supp. 1971), is beyond the scope of this comment. See also note 34, *infra*.

THE LAND BOOM IN RURAL CALIFORNIA

There are several reasons for the phenomenal growth of recreationally oriented or second home subdivisions: the continuing period of general affluence which began following World War II, the growth in population, the limited supply of land suited to recreational use, and the growth of interest in outdoor recreation that has resulted from a general increase in leisure time.¹⁰ Another contributing factor to this growth has been the investment potential vigorously promoted by the developers of these subdivisions.¹¹

The Empty Subdivisions

Concern over the rapid growth of these subdivisions arose because many of them, if not the great majority, are either unnecessarily or prematurely created.¹² The predominant number of vacant lots stands as mute testimony to the prematurity of these subdivisions. For example, in a recent six year period in Nevada County, California, only 159 houses were built on 8510 recreational subdivision lots that were authorized during that period.¹³ Sparseness of construction also is evident in a recreational subdivision located in the Lake Tahoe Basin portion of Placer County, where 38 houses have been built on the 294 lots sold since 1967.¹⁴

Sparse housing development in these subdivisions can be attributed primarily to these factors: most of the purchasers either never intend to construct houses on their lots,¹⁵ are financially unable to build on them,¹⁶ or have purchased them for use during their

¹⁰ Krueger, *supra* note 1, at 354.

¹¹ See Taylor, *Subdividing the Wilderness*, SIERRA CLUB BULLETIN, Jan. 1971, at 5.

¹² See Taylor, *supra* note 11, at 4. The term "premature subdivision" has been broadly defined as "speculative real estate activity in advance of actual market demand." Sussna and Kirchhoff, *A Neglected Opportunity: The Problems of Premature Subdivision*, 3 URBAN LAW. 126 (1971).

¹³ Berliner, *Plague on the Land*, CRY CALIFORNIA, Summer 1970, at 5.

¹⁴ Field trip to Kingswood Estates, Units 1-4, Placer County, California, Sept. 12, 1971.

¹⁵ Palm Springs Panorama is a rather typical example of the premature subdivisions in Riverside County . . . all are oriented to the lot buyer who thinks he is making an investment in real estate that will provide him with a hedge against inflation. Very, very few of these buyers really expect to eventually build a house and live on this [sic] lot.

Address by William R. Livingstone, Planning Director, Riverside County, *Hearings before the Joint Assembly Subcommittees on Premature Subdivisions*, in Los Angeles, Dec. 10, 1970 [hereinafter cited as 1970 *Hearings*].

¹⁶ Sample construction costs for a three bedroom cabin containing 1350 square feet in the Lake Tahoe Basin are \$28,500. Most lenders require that the lot be completely paid for before granting a construction loan, or, alternatively, they will only lend between 50 and 80 percent of their appraised value of the lot and building. Thus, if a lot costs \$7,500, the purchaser must have, excluding closing costs, at least \$7,200 and sometimes as much as \$18,000 before he can begin construction. These

future retirement. The subdivision promoters have convinced many of the buyers that the supply of land, especially recreational land, is diminishing while the population is increasing. Hence, an increasing demand for this land is inevitable, making the present purchase of recreational land a good investment.¹⁷ While the basic assumptions with respect to land availability and population growth are probably sound, the conclusion that recreational land is a good investment in the case of these subdivisions is not necessarily correct.¹⁸ Furthermore, those who purchase lots with the intent to build in the future often fail to realize the cost of constructing and maintaining a second home.¹⁹

The Need for Governmental Control

Regardless of the specific reasons why many recreationally oriented subdivisions are premature, the fact that they are premature causes immediate problems which must be acknowledged and controlled. A premature subdivision, recreationally oriented or not, imposes unnecessary costs on the local community, the buyer, and the environment.²⁰

The recreational subdivisions are said to add to the local communities' tax base while imposing fewer demands for community services than conventional (primary residential) subdivisions.²¹ However, sparse housing development often requires the same level of community services without a corresponding increase in the tax base. For example, a county must clear the roads of snow or sand whether the subdivision contains one house or one hundred.²² When a family maintains its primary home in the subdivision,²³ the school district must provide for the education of the children, and frequently must arrange for school bus transportation to and from

figures will vary with the cost of the lot and cabin as well as the money market conditions. Personal survey by the author of the lending practices of banks and savings and loan associations which lend construction funds for property in the Lake Tahoe area. Data on file in the office of the SANTA CLARA LAWYER.

¹⁷ See generally Taylor, *supra* note 11, at 4.

¹⁸ See text accompanying note 26, *infra*.

¹⁹ Sample maintenance costs for the example given in note 16 average \$315 per month including payments on principal and interest on a 25 year, \$25,500 loan at 7½ percent and a 15 year, \$3,300 street improvement bond at 7 percent. Interview with Dr. N. L. Lee, property owner in Kingswood Estates, Nov. 6, 1971.

²⁰ See generally Berliner, *supra* note 13, at 1; Taylor, *supra* note 11, at 4; Yearwood, *Subdivision Law: Timing and Location Control*, 44 J. URBAN L. 585 (1967).

²¹ See Berliner, *supra* note 13, at 8.

²² "Since 1962 the county has spent between \$30,000 and \$40,000 per year to clear blow sand from public roads in this subdivision [Palm Springs Panorama]. This is equivalent to about \$600 a year for each existing residence." Livingstone, *supra* note 15.

²³ One-third of the houses at the Lake of the Pines are occupied by permanent residents. Berliner, *supra* note 13, at 8.

the often remote subdivision. The tax revenues generated by the new subdivision do not fully offset the costs of services provided, and this burden is shared by the existing residents in the form of higher taxes.

Utility services are likewise required even if only one house is built. Should less than full development occur, the utility companies cannot recover from the individual residents the cost of extending services to the subdivision or to the individual lots. All of the rate payers in the community must, therefore, subsidize the burden.²⁴

The adverse effect that premature subdivisions have on buyers often does not surface until they attempt to resell their lots. The District Attorney of Nevada County, California, recently conducted a survey of the purchasers of lots in the Lake of the Pines subdivision. More than half of those who participated in the survey said that they had bought their lots as an investment.²⁵ However, as a resale study conducted by the California State Attorney General's Office indicated, out of 27 resales in the Lake of the Pines subdivision, only three were classified as gains.²⁶ These figures may not tell the entire story since, in many cases, virtually no resale market exists.²⁷ Many of the lots in recreational subdivisions have "For Sale" signs on them.²⁸ In one subdivision in the Lake Tahoe Basin, this author recently observed that 31 of the 294 lots had "For Sale" signs.²⁹ Undoubtedly, some of the other lot owners would like to sell their lots but have not made the effort to post signs. The lack of a resale market for recreational subdivision lots is in large part attributable to the land developer, for as soon as he sells out one subdivision, either he or another developer is promoting another one nearby.³⁰

And yet, of all these problems, probably the most important are the adverse effects on the environment caused by premature subdivisions. It is primarily for this reason that state legislation to control their growth is urgently needed. While it may be argued that any community should be allowed to suffer the consequences of

²⁴ Address by Al B. Cook, Manager, Commercial Dept., P.G. & E., 1970 *Hearings*, *supra* note 15.

²⁵ Berliner, *supra* note 13, at 7.

²⁶ Letter from James M. Sprowles to Marshall S. Mayer, Deputy Attorney General, March 19, 1970. In calculating profits on resales, any notes taken back by the sellers were discounted to their equivalent cash value. The same study indicated that there were 83 trade-ins, 42 foreclosures, 10 buy-backs, and 9 refinances on the 1944 parcels.

²⁷ Address by Walter Lancaster, Assessor, Imperial County, 1970 *Hearings*, *supra* note 15. *See also* Wall Street Journal, Jan. 26, 1972, at 29, col. 3.

²⁸ Taylor, *supra* note 11, at 9.

²⁹ *See* note 14, *supra*.

³⁰ *See generally* Berliner, *supra* note 13, at 7.

approving a subdivision, or that the individual buyer is to some extent protected from outright fraud,³¹ damage to the environment is of statewide concern.

Furthermore, if the trend of sparse home construction in these recreational subdivisions continues, some of them will be completely unnecessary for residential purposes. The sparse housing development in many subdivisions can and should be substituted by full development in fewer subdivisions. Not only does an uninhabited subdivision preclude future cultivation, grazing, timbering, and other alternative land uses, but the recreational and aesthetic value of undeveloped land is lost forever.

If, however, these subdivisions are literally only "premature," *i.e.*, full development *will* occur later, the subdivisions layouts are likely to preclude any subsequent alternative methods of developing the areas, *e.g.*, cluster design. The roads, sewers, drains, and other improvements have committed the areas to certain physical patterns of development.

All subdivision activity affects the water quality and wildlife of an area to some extent. Roads and other improvements with impervious surfaces cause increased water runoff from storms or melting snow. This increased water runoff, combined with the cuts and fills necessary for road construction, produces a greater degree of soil erosion eventually leading to excessive siltation of lakes and streams, to the detriment of both water quality and fish production.³² Subdivisions affect wildlife by intruding into wildlife habitats and often obstructing the paths of migratory animals.³³ Therefore, to the extent that a subdivision is not needed for housing, the ecology of an area is needlessly disturbed.

Thus, premature subdivisions impose unnecessary costs on the local communities which are not fully compensated by the revenues generated by them, lure buyers into making investments that have doubtful profit potential, and unnecessarily disrupt the environment.

³¹ CAL. BUS. & PROF. CODE § 11000 *et seq.* (West Supp. 1971).

³² "Three miles of affected stream supported about forty pounds of trout per surface acre prior to construction [of the Crocker Mountain Estates subdivision in 1967]. Post construction surveys revealed about five pounds of trout per surface acre.

•••••
"Road construction in the Lake Wildwood Subdivision in 1969 resulted in an estimated 50 percent loss in fish production because of siltation." Address by Larry M. Cloyd, Deputy Director, Dept. of Fish and Game, *Hearings before the Joint Assembly Subcommittees on Premature Subdivisions*, in Sacramento, Jan. 26, 1971.

³³ E. Gerstung, A Brief Survey of the Impact of Subdivision Activity on the Fish and Wildlife Resources of Nevada County 5 (April 1970).

PRE-1971 CALIFORNIA SUBDIVISION LAW

The authority for the existing regulation of most subdivisions in California is derived from the Subdivision Map Act.⁸⁴ The control over design and improvement of these subdivisions is vested in the local governing bodies.⁸⁵ Until 1971, statutory authority for the control over the design and improvement of subdivisions was limited to characteristics internal to the subdivision, *e.g.*, streets, curbs, gutters, and drains.⁸⁶

The California judiciary has recognized that the Subdivision Map Act and the ordinances passed pursuant to it have several purposes, such as: the regulation and control of the design and improvement of subdivisions with proper consideration for their relationship to adjoining areas;⁸⁷ the prevention of fraud and exploitation;⁸⁸ and the protection of both the public and purchaser.⁸⁹ Thus, there is authority which encourages local governments to regulate beyond the internal characteristics of subdivisions subject to the limitations of the statute.

Unfortunately, little consideration had been given to the need for or the location of subdivisions by local planning commissions and legislative bodies. If a subdivision met the regulatory criteria adopted pursuant to the Subdivision Map Act, it was automatically

⁸⁴ CAL. BUS. & PROF. CODE § 11500 *et seq.* (West 1964). The Subdivision Map Act defines "subdivision" as a division of real property "for the purpose of sale, lease or financing, . . . into five or more parcels . . ." CAL. BUS. & PROF. CODE § 11535 (a) (West Supp. 1971). Thus a division of real property into four or fewer parcels is not covered by the Subdivision Map Act. Certain other divisions of real property are also excluded. CAL. BUS. & PROF. CODE § 11535 (b) & (c) (West Supp. 1971).

⁸⁵ "Control of the design and improvement of subdivisions is vested in the governing bodies of cities and counties. Every county and city shall adopt an ordinance regulating and controlling the design and improvement of subdivisions." CAL. BUS. & PROF. CODE § 11525 (West Supp. 1971).

⁸⁶ 'Design' refers to street alignment, grades and widths, alignment and widths of easement and rights of way for drainage and sanitary sewers and minimum lot area and width. 'Design' also includes land to be dedicated for park and recreation purposes.

CAL. BUS. & PROF. CODE § 11510 (West Supp. 1971).

'Improvement' refers to only such street work and utilities to be installed, or agreed to be installed by the subdivider on the land to be used for public or private streets, highways, ways, and easements, as are necessary for the general use of the lot owners in the subdivision and local neighborhood traffic and drainage needs as a condition precedent to the approval and acceptance of the final map thereof.

CAL. BUS. & PROF. CODE § 11511 (West 1964).

⁸⁷ *Newport Bldg. Corp. v. City of Santa Ana*, 210 Cal. App. 2d 771, 776, 26 Cal. Rptr. 797, 800 (1962); *Kelber v. City of Upland*, 155 Cal. App. 2d 631, 638, 318 P.2d 561, 565 (1957).

⁸⁸ *Pratt v. Adams*, 229 Cal. App. 2d 602, 605, 40 Cal. Rptr. 505, 508 (1964); 10 OP. CAL. ATT'Y GEN. 203, 204 (1947).

⁸⁹ *Pratt v. Adams*, 229 Cal. App. 2d 602, 605, 40 Cal. Rptr. 505, 508 (1964); 38 OP. CAL. ATT'Y GEN. 125, 128 (1961).

approved.⁴⁰ There were only four grounds enumerated in the Subdivision Map Act for disapproval of a subdivision map which protected the prospective buyer or the public. Disapproval resulted when: 1) the subdivision was to be located in the area subject to flood hazards;⁴¹ 2) the waste discharge would violate the requirements of the regional water quality control board;⁴² 3) there was no reasonable public access to coastline or shoreline if the subdivision fronted either of them;⁴³ and 4) there was no reasonable public access to a lake or reservoir if the subdivision fronted either of them and they were partly or wholly owned by a public agency.⁴⁴

Only the first of the above grounds for disapproval was directly related to control over the location of a subdivision. The other grounds for disapproval related to the internal design and improvements of a subdivision.

Ironically, since 1951 all cities and counties have been required to prepare and adopt a general plan,⁴⁵ one of the required elements of which is a land use element.⁴⁶ A general plan, if kept up to date, is an indication of what the community wants in terms of growth and permits decision makers to coordinate their activities.⁴⁷ Day to day decisions which commit land to a certain use, *e.g.*, subdivision, industrial development, and highways, can be based on the general plan. Nevertheless, to date in California, subdivision regulation and land planning have followed separate paths. For example, the state enabling legislation for subdivision regulation by local governments

⁴⁰ Address by David Stump, Planning Director, Imperial County, 1970 *Hearings*, *supra* note 15.

⁴¹ CAL. BUS. & PROF. CODE § 11551.5 (West 1964).

⁴² *Id.* § 11551.6 (West Supp. 1971).

⁴³ *Id.* § 11610.5.

⁴⁴ *Id.* § 11610.7.

⁴⁵ "Each planning agency shall prepare and the legislative body of each county and city shall adopt a comprehensive, long-term general plan for the physical development of the county or city . . ." CAL. GOV'T CODE § 65300 (West 1966) (corresponds to CAL. GOV'T CODE § 65270 added by Cal. Stats., 1951, ch. 334, § 1, at 686 (1951)). Chartered cities are exempted from the provisions of Chapter 3 (Local Planning) of the Planning and Zoning Law of which this requirement is a part. *Id.* § 65700.

⁴⁶ The general plan shall consist of a statement of development policies and shall include a diagram or diagrams and text setting forth objectives, principles, standards, and plan proposals. The plan shall include the following elements: (a) A land-use element which designates the proposed general distribution and general location and extent of the uses of the land for housing, business, industry, open space, . . . and other categories of public and private uses of land.

Cal. Stats., 1971, ch. 149, § 1, at — (West Cal. Leg. Serv. 1971), amending CAL. GOV'T CODE § 65302 (West Supp. 1971).

⁴⁷ D. HAGMAN, URBAN PLANNING AND LAND DEVELOPMENT CONTROL LAW 52 (1971). The author points out that, in addition to the planning commission, the public utilities, the general public, and the courts can base some of their decisions on the general plan.

is codified in the California Business and Professions Code⁴⁸ while the enabling legislation for planning and zoning, known as the Planning and Zoning Law, is codified in the California Government Code.⁴⁹ There is only one minor cross reference from the Subdivision Map Act to the Planning and Zoning Law.⁵⁰ Only after Assembly Bill 1301 was enacted in 1971 did the California Subdivision Map Act provide that nonconformance with a general plan was grounds for disapproval of a subdivision map.⁵¹ Also, the requirement that each city and county adopt a general plan has been a meaningless one because no sanctions are imposed for failure to develop or adopt a plan.⁵² Furthermore, while the local legislative body is required to adopt a general plan, there is no time limit⁵³ within which adoption must occur.⁵⁴ Thus, a local legislative body does not violate the code⁵⁵ so long as it can show that it intends to adopt a plan in the future. There is no incentive for prompt action on the part of the local government since a violation of the code is difficult to prove. Until the 1971 legislation⁵⁶ was passed, a general plan was not a condition precedent to any other act of the local government.⁵⁷

⁴⁸ CAL. BUS. & PROF. CODE § 11500 *et seq.* (West Supp. 1971).

⁴⁹ CAL. GOV'T CODE § 65000 *et seq.* (West Supp. 1971).

⁵⁰ CAL. BUS. & PROF. CODE § 11547 (West Supp. 1971). This section provides that if a local subdivision ordinance refers to the circulation element of the general plan and to flood control provisions of the general plan which identify streams for which bridge crossings are required, then the local government may require the payment of fees to defray the costs of the bridges needed for the subdivision as a condition precedent to the approval of the final subdivision map.

⁵¹ See also CAL. GOV'T CODE § 65567 (West Supp. 1971). This section was added in 1970 and provides that no subdivision map may be approved unless the proposed subdivision is consistent with the local *open-space plan* as opposed to the local *general plan*.

⁵² CAL. GOV'T CODE § 65300 (West 1966).

⁵³ A conservation element is required to be adopted by July 1, 1972. Cal. Stats., 1970, ch. 717, § 3, at 1345 (1970). See also Legis. Counsel's Opinion No. 17884 (Aug. 26, 1971). This opinion was given in response to a question from State Senator Alfred Alquist as to whether there was a deadline for local governmental conformance to Senate Bill 351 (1971). S.B. 351 amended section 65302 of the California Government Code to require local general plans to include a seismic safety element. S.B. 351 did not contain a deadline for conformance. The Legislative Counsel's Opinion stated that their research had not disclosed the existence of any general statutory deadline for adoption of a general plan containing the elements specified by section 65302. The opinion mentioned, however, that the legislative body of local governments must comply with the 1970 amendments to section 65302 (requirement of a conservation element) by July 1, 1972.

⁵⁴ 4 OP. CAL. ATT'Y GEN. 150 (1944).

⁵⁵ CAL. GOV'T CODE § 65300 (West 1966).

⁵⁶ See text accompanying notes 70-72, *infra*.

⁵⁷ There are a few exceptions to this general observation. See, e.g., CAL. HEALTH & SAFETY CODE §§ 33300, 33302 (West 1967). These sections provide that a community must have a master plan before it can undertake redevelopment of an area pursuant to the Community Redevelopment Law. If the presence of a general plan were a condition precedent to a local governmental act such as this, that act could be enjoined until the general plan was adopted. See CAL. CIV. PRO. CODE § 526 (West 1954).

CALIFORNIA'S 1971 SUBDIVISION LEGISLATION⁵⁸

Assembly Bill 1301 brought together subdivision regulation and land planning.⁵⁹ The bill prohibited approval of a final subdivision map for any land project unless a specific plan⁶⁰ covered the area included within the land project,⁶¹ and provided that no city or county should approve a subdivision map⁶² that would be inconsistent with its general or specific plans.⁶³ Additionally, the bill prescribed grounds for disapproval of subdivision maps by local government,⁶⁴ listed items to be included in specific plans,⁶⁵ and required county and city zoning ordinances to be consistent with general plans by January 1, 1973.⁶⁶ The bill also provided that any resident or property owner within the applicable jurisdiction might bring an action in superior court to enforce compliance with the requirement of consistency between the zoning ordinances and the general plan.⁶⁷

⁵⁸ Conservation groups became alarmed by the increase in the number of recreational subdivisions and in 1970 asked State Assemblyman Leo McCarthy to study the problem. Telephone interview with Thomas Willoughby, Staff Consultant to Assemblyman Knox and Consultant to Joint Assembly Subcommittees on Premature Subdivisions, in Sacramento, Oct. 22, 1971. A previous attempt (S.B. 395, 1970 Leg., Reg. Sess. (1970)) to control recreational subdivisions in 1970 died in committee. SENATE DAILY JOURNAL, Sept. 23, 1970, at 6102-03. A House Resolution, sponsored by Assemblymen McCarthy, Knox, and Chappie, was proposed which would have assigned the problem to a legislative committee. H.R. 263, 1970 Leg., Reg. Sess. (1970). Although the resolution died without being assigned to a committee, the subject matter of the resolution was held over for interim study by joint subcommittees of the Local Government Committee and the Natural Resources and Conservation Committee. ASSEMBLY WEEKLY HISTORY, Sept. 23, 1970, at 942. The joint subcommittees, referred to as the Joint Assembly Subcommittees on Premature Subdivisions, conducted hearings during late 1970 and early 1971. Assembly Bills 1301 and 1303 were primarily the result of these hearings. Telephone interview with Thomas Willoughby, *supra*.

⁵⁹ See text accompanying notes 45-57, *supra*.

⁶⁰ A "specific plan" is one that is "based on the general plan and drafts of such regulations, programs, and legislation as may in [the local planning agency's] judgment be required for the systematic execution of the general plan . . ." CAL. GOV'T CODE § 65450 (West 1966).

⁶¹ A.B. 1301, 1971 Leg., Reg. Sess. § 4 (1971) (corresponds to Cal. Stats., 1971, ch. 1446, § 4, at — (West Cal. Leg. Serv. 1971)).

⁶² There are two categories of subdivision maps, tentative and final:

"Tentative map" refers to a map made for the purpose of showing the design of a proposed subdivision and the existing conditions in and around it and need not be based upon an accurate or detailed final survey of the property.

CAL. BUS. & PROF. CODE § 11503 (West 1964).

"Final map" refers to a map prepared in accordance with the provisions of this chapter [Subdivision Map Act] and those of any applicable local ordinance, which map is designed to be placed on record in the office of the county recorder in which any part of the subdivision is located.

Id. § 11504.

⁶³ A.B. 1301, 1971 Leg., Reg. Sess. § 7 (1971) (corresponds to Cal. Stats., 1971, ch. 1446, § 7, at — (West Cal. Leg. Serv. 1971)).

⁶⁴ *Id.*

⁶⁵ *Id.* § 10.

⁶⁶ *Id.* § 12.

⁶⁷ *Id.*

Originally, the bill specified that one ground for disapproval of a subdivision map would be that an adequate supply of similar vacant lots, currently offered for sale to the public, already existed in the general location of the proposed subdivision.⁶⁸ This ground for disapproval was deleted from the final version of the bill because "an adequate supply of similar vacant lots" was found to be too difficult a term to define.⁶⁹

Assembly Bill 1301 provided that a local government could not approve a final subdivision map for a land project unless it had adopted a specific plan for the area to be subdivided.⁷⁰ Since a general plan is the basis for a specific plan,⁷¹ a general plan is now a prerequisite to the approval of a final subdivision map of a land project. A "land project" is defined as a subdivision of fifty or more unimproved, residential parcels in an area where there are fewer than 1500 registered voters within the subdivision or within a two mile radius of the subdivision.⁷² Most second home subdivisions would be included in the definition of land project since the lot owners would most probably be registered at their primary place of residence. This section⁷³ of the bill was thus directed at remote or recreational subdivisions rather than subdivisions on the urban fringe. Hence, a specific plan and a general plan were made conditions precedent to the approval of most recreational subdivisions. Another provision of Assembly Bill 1301 was that a local government could not approve a subdivision map which was inconsistent with applicable general and specific plans,⁷⁴ thus providing for location control of all new subdivisions. Unfortunately, control over the scheduling of new subdivisions is still nonexistent since general plans are not required to be adopted for various points in time, *i.e.*, since there is no requirement to have a general plan for 1980, 1990, 2000, etc., a local government could approve by 1972 a sufficient number of subdivision maps to meet the demand for lots through the year 2072.

A loophole left by the bill is that although a subdivision map must be consistent with the general plan, there are few controls over the plan's amendment procedure. A local government may amend its general plan to accommodate a subdivision whenever it is presented with a subdivision map inconsistent with its general plan.

⁶⁸ A.B. 1301, 1971 Leg., Reg. Sess. § 7 (as of July 9, 1971).

⁶⁹ Telephone interview with Thomas Willoughby, *supra* note 58.

⁷⁰ A.B. 1301, 1971 Leg., Reg. Sess. § 4 (1971) (corresponds to Cal. Stats., 1971, ch. 1446, § 4, at — (West Cal. Leg. Serv. 1971)).

⁷¹ CAL. GOV'T CODE § 65450 (West 1966).

⁷² CAL. BUS. & PROF. CODE § 11000.5 (West Supp. 1971).

⁷³ CAL. GOV'T CODE § 65450 (West 1966).

⁷⁴ A.B. 1301, 1971 Leg., Reg. Sess. § 7 (1971) (corresponds to Cal. Stats., 1971, ch. 1446, § 7, at — (West Cal. Leg. Serv. 1971)).

This precise situation occurred in Nevada County, California, when the general plan was being used only as a guide.⁷⁵ The only protections against this occurring more frequently and in other parts of the state are the procedural requirements of a public hearing held by the local planning commission,⁷⁶ a public hearing held by the local legislative body,⁷⁷ and the local legislators' accountability to their constituents.

Had it not been vetoed by Governor Reagan,⁷⁸ Assembly Bill 1303 would have required the Council on Intergovernmental Relations⁷⁹ to adopt criteria and guidelines for the preparation and content of city and county general plans.⁸⁰ It also would have required cities and counties to report annually to the Council the degree to which their general plans complied with the established criteria and guidelines.⁸¹ The Council would then have been required to publish a list of counties and cities whose plans did not comply with Sections 65300 and 65302 of the California Government Code.⁸² The directive that cities and counties adopt a general plan still would have been a meaningless one from an overall planning standpoint, however, since there was neither a deadline for adoption of a general

⁷⁵ In addition to ignoring the general plan's population recommendations, the board of supervisors has largely ignored the plan's urban location recommendations. Just about all the lots authorized since the adoption of the plan in 1967 have been placed in spots not contemplated by the plan for subdivision development. When public objection to this procedure started to grow strong, the supervisors simply modified the general plan to fit the needs of the promoters, on their request.

Berliner, *supra* note 13, at 5.

⁷⁶ CAL. GOV'T CODE §§ 65351, 65356.1 (West Supp. 1971). Adequate notice of the hearing is an additional requirement of these sections.

⁷⁷ CAL. GOV'T CODE § 65355 (West 1966). Adequate notice of the hearing is an additional requirement of this section.

⁷⁸ ASSEMBLY WEEKLY HISTORY, Nov. 24, 1971. The Governor gave as his reasons for not signing the bill:

The bill goes far beyond the intent of the provisions of existing statutes. In my opinion, it has the practical effect of imposing on local governments unduly restrictive policy made at the state level. By intruding on the prerogatives which I believe are and should be reserved to locally elected officials—who can be held directly accountable to the citizens of the communities they represent—I believe A.B. 1303 not only does violence to, but also is an unjustified infringement upon, the *doctrine of home rule*—a cornerstone of this administration's policy.

Los Angeles Daily Journal, Nov. 24, 1971, at 20, col. 1.

⁷⁹ The Council on Intergovernmental Relations is an advisory body composed of representatives of cities, counties, school districts, state agencies, and the public. All of these representatives are appointed by the Governor. The Chairmen of the Senate and Assembly Committees on Local Government are nonvoting, ex officio members of this body. The duties of this body are to provide planning assistance to city, county, district, and regional planning agencies and to encourage their formation and proper functioning. CAL. GOV'T CODE §§ 34200, 34211 (West Supp. 1971).

⁸⁰ A.B. 1303, 1971 Leg., Reg. Sess. § 1 (as of July 9, 1971).

⁸¹ *Id.* § 2.

⁸² *Id.*

plan nor any penalty for governmental failure to act. The original bill would have corrected this problem since it would have provided that the State Controller could not transmit apportionments from the Highway User Tax Fund to those counties and cities which had not complied with the requirements of Sections 65300 and 65302 of the California Government Code.⁸³ However, this weakness would have been irrelevant from a recreational subdivision control standpoint since, as provided by Assembly Bill 1301, a local government cannot approve a final subdivision map of a land project unless it has a general and specific plan.⁸⁴

A COMPARISON WITH OTHER STATES' LEGISLATION

Some states require the satisfaction of certain conditions beyond engineering and design specifications before a subdivision map is approved. A Wisconsin statute provides that approval of a plat shall be conditioned upon compliance with any local master plan or official map.⁸⁵ However, if no such plan or map exists, the plat still may be approved.⁸⁶ Washington currently requires that the local legislative body determine that the "public interest" is served by the subdivision.⁸⁷ There is neither a requirement to have a general plan nor mandatory adherence to one if it exists. New Hampshire provides that the local planning board adopt regulations which may protect against scattered or premature subdivisions.⁸⁸

In contrast with those states which have provided for land use control at the local level, Maine and Vermont have state development permit systems.⁸⁹ Maine requires a development license for any development involving over twenty acres or consisting of structures which cover more than 60,000 square feet of ground area.⁹⁰ The issuance of a development license is based on consideration of

⁸³ A.B. 1303, 1971 Leg., Reg. Sess. § 4 (as of May 13, 1971).

⁸⁴ See text accompanying notes 70-72, *supra*.

⁸⁵ WIS. STAT. § 236.13(1)(c) (1957).

⁸⁶ WIS. STAT. ANN. § 236.13 (1957).

⁸⁷ WASH. REV. CODE ANN. § 58.17.110 (Supp. 1970). A state legislative proposal is being prepared which will specify eleven factors to be considered instead of "public interest." Another proposal being drafted would allow the State Department of Ecology with the concurrence of the local government to designate certain areas of critical environmental concern. A person desiring to develop within a "critical area" would then be required to obtain approval from the local commissioners and the State Department of Ecology. Interview with Robert Matthews, Administrative Intern, Planning and Community Affairs Agency, State of Washington, in Santa Clara, California, Oct. 21, 1971.

⁸⁸ N.H. REV. STAT. ANN. § 36:21 (1970).

⁸⁹ ME. REV. STAT. ANN. tit. 38, § 481 *et seq.* (Supp. 1970); Vt. Acts, 1969 Adj. Sess., No. 250, at 237 (1970).

⁹⁰ ME. REV. STAT. ANN. tit. 38, § 481 *et seq.* (Supp. 1970).

the following four factors: 1) the financial capability of the developer; 2) provisions for traffic movement; 3) the development's environmental effect; and 4) the suitability of soil type.⁹¹ A developer who is denied approval may appeal directly to the Supreme Judicial Court.⁹²

Vermont, unlike Maine, requires the State Environmental Board to adopt land use plans based on economic, social, and environmental values.⁹³ A permit must be obtained from a district environmental commission prior to the sale or offer for sale of any interest in any subdivision, the construction of any subdivision or development, or the development of any land within the state.⁹⁴ The district commission must find that the subdivision or development conforms to a duly adopted development plan, land use plan, or land capability plan.⁹⁵ Denial of a permit by a district commission may be appealed to the State Environmental Board which conducts a *de novo* hearing.⁹⁶ An appeal may then be taken to the state supreme court.⁹⁷ The statewide permit systems of Maine and Vermont are viable primarily because local zoning had not become firmly entrenched in either state.⁹⁸ Both states are also relatively small, which makes land use management on a statewide basis relatively easy. Neither of these favorable conditions exists in California.

The legislation adopted by California in 1971 allows land use control to remain at the local level while attempting to upgrade the quality of local land use controls by requiring a degree of long range planning. Intelligent and informed land use decisions require the existence of and adherence to a general plan. Assembly Bill 1301 as codified effectively requires the promulgation of a general plan prior to the approval of a recreational subdivision and prohibits the approval of subdivisions that are inconsistent with such general plans.

The two primary reasons for leaving land use control at the local level are: 1) the people responsible for land use planning are politically more accountable at the local level than they would be if a state agency were responsible; and 2) the immensity and geographical variances of California make it difficult to formulate a viable statewide land use plan. However, there are two possible shortcomings in allowing land use planning to remain at the local

⁹¹ *Id.* § 484.

⁹² *Id.* § 487.

⁹³ Vt. Acts, 1969 Adj. Sess., No. 250, §§ 18-20, at 245-46 (1970).

⁹⁴ *Id.* § 6, at 240. "Development" is defined as a project covering more than 10 acres or containing more than 10 units. *Id.* § 2(3), at 238.

⁹⁵ *Id.* § 12(a)(9), at 243.

⁹⁶ *Id.* § 14(a), at 244.

⁹⁷ *Id.* § 14(b), at 244.

⁹⁸ Haskell, *supra* note 6, at 293, 294, 322.

level. First, assuming good faith on the part of local planners and legislators, local planning leads to suboptimization, *i.e.*, the sum of the optimum land use plans for the local jurisdictions may not result in the optimum land use plan for the state. The effects of one jurisdiction's land use does not end at its boundaries. A good illustration of this is the Lake Tahoe Basin which includes two California counties⁹⁹ and three Nevada counties, which in turn contain numerous small communities.¹⁰⁰ One jurisdiction's method of handling sewage can affect the entire region's most prized asset, Lake Tahoe.¹⁰¹ The second problem attributable to local control of land use is the short-sightedness of the local planners, legislators, and citizens. Often all three groups will favor approval of a subdivision solely because they have been convinced that it will help the economy of the area.¹⁰²

Although the California Legislature has not yet decided to remove land use planning from the local level, it has continuously taken steps to implement planning on the local level and then improve the quality of that planning. Prior to 1951, a local government was not required to adopt a general plan.¹⁰³ Since that time the list of required elements of a general plan has grown larger¹⁰⁴ as the legislature has attempted to compensate for the shortcomings of local land use planning by setting statewide planning guidelines.¹⁰⁵

A PROPOSAL FOR BETTER RECREATIONAL SUBDIVISION CONTROL

Several loopholes in California's subdivision control and planning laws enacted to date have been noted in the preceding discus-

⁹⁹ Only a small portion of Alpine County is physically within the Lake Tahoe Basin and it therefore is usually not considered to be one of the counties in the Basin.

¹⁰⁰ See generally Comment, *Lake Tahoe: The Future of a National Asset*, 52 CALIF. L. REV. 563 (1964).

¹⁰¹ *Id.* at 601-18.

¹⁰² The attitude expressed by a city building inspector and local builder in Dayton, Washington is probably not uncommon: "We need people; we need money. We've got people from the Tri-Cities who'd be here right now if we'd let them." Walla Walla Union-Bulletin, July 21, 1971, at 5, col. 3. See generally Berliner, *supra* note 13, at 8; Taylor, *supra* note 11, at 7.

¹⁰³ See note 45, *supra*.

¹⁰⁴ In 1970, a conservation element and an open space element were added to the list of required elements of a general plan. Cal. Stats., 1970, ch. 717, § 1, at 1343-44 (1970); Cal. Stats., 1970, ch. 1590, § 1.5, at 3310-11 (1970). In 1971 a seismic safety element was added to the list of required elements of a general plan. Cal. Stats., 1971, ch. 150, § 1, at — (West Cal. Leg. Serv. 1971).

¹⁰⁵ The State Legislature has utilized other methods of improving local planning. One method used is the creation of advisory bodies such as the Council on Intergovernmental Relations. See note 79 *supra*. Another method used is the formation of regional or district planning bodies such as the Lake Tahoe Regional Planning Agency. CAL. GOV'T CODE § 65060 *et seq.*, § 66100 *et seq.*, § 67000 *et seq.* (West Supp. 1971).

sion: 1) control over the timing of the subdivision of land is still nonexistent;¹⁰⁶ 2) a general plan can too easily be amended to accommodate a particular subdivision;¹⁰⁷ and 3) there is still no meaningful incentive for local governments to adopt a general plan.¹⁰⁸ Another issue not dealt with in the legislation enacted in 1971 is a means to enforce the requirement of consistency between a proposed subdivision and the applicable general and specific plans.

Timing Control and General Plan Amendment Abuses

The second home subdivision explosion has been limited to subdivisions which have been marketed on an unimproved lot basis. Few developers would construct houses, duplexes, apartments, and condominiums in the absence of actual market demand for these types of housing. The control over the timing of the subdivision of land thus can be directed at the control of the subdivision of land into single family residential lots. It is necessary to evaluate the total number of single family dwelling unit lots with respect to some element of a general plan that varies with time.

The general plan requirements should therefore be amended to include projections, in ten year intervals, of both population and single family dwelling units. The population projections should include only full time residents. The single family dwelling unit projections should include both primary and secondary dwellings. The state should require that this information be filed with an agency designated by the Council on Intergovernmental Relations. Whenever a duly adopted general plan amendment affects these projections, the local government should be required to transmit these new projections to the agency.

The state agency should independently calculate or acquire from other agencies projections of population and single family housing¹⁰⁹ for each county. Since it is likely that most purchasers of second home lots purchase them outside of the county of their primary residence, it would be logical for the agency to project the statewide demand for second home lots. The agency should consider income forecasts and purchases by out of state residents in its projection of second home demand. It should then attempt to allocate this total statewide demand among the various counties. Factors

¹⁰⁶ See text accompanying note 74, *supra*.

¹⁰⁷ See text accompanying notes 75-77 and note 75, *supra*.

¹⁰⁸ See text accompanying notes 52-57, 83, *supra*.

¹⁰⁹ The single family housing projections include both primary and secondary dwelling units.

to be considered by the state in allocating secondary housing among the counties would be: the availability of suitable areas for development,¹¹⁰ trends in recreational activities, and proximity to urban populations.

Since it is improbable that the state agency's projections for each county will agree with the individual counties' projections, a procedure for reconciling them is required. Unless a county's projections vary in excess of some designated percentage (X percent) of the state's figures for that county, the county should be allowed to base its land use decisions on its own planning figures. If the local government's figures vary in excess of X percent of the state's figures, use of the state's projections would be mandatory unless special conditions could be shown which would make use of the local figures more appropriate.¹¹¹

After projecting the single family dwelling unit requirements for each ten year period, an allowance should be added for an inventory of vacant single family dwelling unit lots. This allowance should be based on a percentage of the additional single family dwelling units required in the following ten year interval. The sum of the single family dwelling unit requirements for a ten year period plus the vacant lot inventory allowance would be the total allowable number of subdivided single family dwelling unit lots in existence for that ten year period.

A county would be acting *ultra vires* if it approved a subdivision map which caused the total number of approved single family dwelling unit lots within its boundaries to exceed the *allowable* number of subdivided single family dwelling unit lots for the current ten year period. Such action by the county would violate the California Business and Professions Code section 11549.5(a).¹¹² The approval of the proposed subdivision map would be inconsistent with the county's general plan since the total number of approved single family dwelling unit lots would exceed the general plan single family dwelling unit projection plus the allowance for vacant lots.

¹¹⁰ Some consideration should be given to the following subfactors: average slope of the land, proximity to present development, present utility services, vegetative cover, fire hazard, natural slope stability, cut slope stability, excavation difficulty, and soil erosion potential.

¹¹¹ Examples of special conditions which might be grounds for accepting the local government's figures are: the commitment of new industry to the area, extraordinary rates of population and/or income growth in the area, present lack of sufficient single family dwellings in the area, the building of a special attraction such as a Winter Olympics site.

¹¹² A.B. 1301, 1971 Leg., Reg. Sess. / 7 (1971) (corresponds to Cal. Stats., 1971, ch. 1446, § 7, at — (West Cal. Leg. Serv. 1971)).

The following example illustrates the author's proposal.

Assumptions

1. The population and single family dwelling unit projections of the county and the state agency are as follows:

Population Projection by

<i>Year</i>	<i>Nevada County</i>	<i>State</i>
1980	45,000	42,000
1990	60,000	55,000

Single Family Dwelling Unit Projection by

<i>Year</i>	<i>Nevada County</i>		<i>State</i>	
	<i>Primary</i>	<i>Secondary</i>	<i>Primary</i>	<i>Secondary</i>
1980	20,000	5,000	19,000	4,800
1990	28,000	10,000	26,000	9,500

2. A variance of 10% is an acceptable level of accuracy between the state and local projections, *i.e.*, $X = 10\%$.
3. The acceptable level of inventory of vacant single family dwelling unit lots is 50% of the following ten year period's projected net increase in total single family dwelling units.

Application of Proposal

Since all of the county's projections are within 10% of the state's projections, the county is allowed to plan its land use and development based on its own figures.

By 1980, the county projects that it will have 25,000 single family dwelling units (20,000 primary + 5,000 secondary). By 1990, the county projects that it will have 38,000 single family dwelling units (28,000 primary + 10,000 secondary). Thus, the net increase in single family dwelling units between 1980 and 1990 is 13,000 (38,000 - 25,000). The vacant lot inventory allowance for 1970-1980 will, therefore, be 6,500 ($50\% \times 13,000$).

Since the allowable number of single family dwelling unit lots for a ten year period is the sum of the single family dwelling unit requirements and the vacant lot allowance, at no time during the 1970-1980 decade should more than 31,500 single family dwelling unit lots be authorized for Nevada County (25,000 lots for housing for the current ten year period + 6,500 lots for inventory).

Once there are 31,500 single family dwelling unit lots in the county, no additional subdivision maps could be authorized without state approval.¹¹³

¹¹³ Although the population projections required by this proposal were not used

This proposal adds the dimension of time to the regulation of subdivisions. It allows land use control to remain at the local level while the state retains power of review. By ordaining the maximum amount of land that can be allocated for single family housing in any given ten year period, the problems of premature subdivisions can be reduced. The allotment of subdivision map approvals would undoubtedly be judicially sustained since the standard for approval has a rational basis and the state legislature has recognized the need to control premature subdivisions.¹¹⁴ This allotment procedure hopefully will force the counties to make sound, long range, land use plans. Parallel population and single family housing unit projections at the state level will minimize the abuse of the local general plan amendment procedure, which in the past has been frequently used to accommodate a particular developer.¹¹⁵

Incentives and Enforcement

A bill similar to Assembly Bill 1303 in its original form¹¹⁶ should be enacted to provide an incentive for counties to prepare and adopt viable general plans.¹¹⁷ By withholding state funds from

in this example, they can be used by the state agency as a cross check on the primary single family dwelling unit requirements.

¹¹⁴ Cases such as *Albrecht Realty Co. v. Town of Newcastle*, 8 Misc. 2d 255, 167 N.Y.S.2d 843 (Sup. Ct. 1957) and *Beach v. Planning & Zoning Comm'n*, 141 Conn. 79, 103 A.2d 814 (1954) can be distinguished. In *Albrecht Realty*, the town passed a zoning ordinance limiting the number of building permits that could be issued in any year. The court held that the town was not empowered to pass such an ordinance and even if it were, it would be unconstitutional as applied to the plaintiff since it would deprive him of all beneficial use of his land. No national or statewide emergency was shown to justify the use of the town's police power. In *Beach*, the planning commission disapproved a subdivision on the grounds that the town could not afford to provide the services required by the proposed subdivision. The court held that the planning commission did not have the power to use that ground for disapproving the subdivision and even if it had such authority, there would have to exist adequate standards upon which the planning commission could base its decision. Both the *Albrecht Realty* and *Beach* cases thus involved local government exceeding the bounds of its authority. The proposed legislation would vest in the local governments the power to disapprove a subdivision inconsistent with the single family housing unit projections contained in its general plan. The standard to be used in ruling on a particular subdivision is a simple one which does not give the local planning commission room for the exercise of discretion. Both the *Albrecht Realty* and *Beach* cases involved attempts by the local government to control the pace of needed development. The population growth created a demand for additional housing. There is no such demand for housing in the recreational subdivisions. The present landowners would not be deprived of all beneficial use of their land. The land could remain devoted to its current use. There is no demand for housing development. The effect of premature subdivisions on the health, safety, and general welfare (pollution, eutrophication and siltation of lakes and streams) of the citizens of the state justifies the use of the state police power to control them.

¹¹⁵ See note 75, *supra*.

¹¹⁶ See text accompanying note 83, *supra*.

¹¹⁷ Although an incentive to adopt a general plan is not required in order to

the counties until they adopt general plans that comply with the requirements of Section 65302 of the California Government Code,¹¹⁸ the counties would be encouraged to act promptly in adopting a general plan. Compliance also should be measured by the reasonableness of the counties' projections for population and single family dwelling unit growth. The counties' projections should be within an established percentage variance of the state projections.

Enforcement of the requirements that 1) no city or county shall approve a final subdivision map until it has adopted a specific plan for the area to be developed¹¹⁹ and 2) no city or county shall approve a subdivision map inconsistent with its general or specific plans¹²⁰ could be satisfied by adding a provision to the California Business and Professions Code. This provision would allow any resident or property owner in the state to file a writ of mandamus in the superior court of the county in which the proposed project is to be located to enforce compliance with these requirements.¹²¹

Under the former version of Section 11525 of the California Business and Professions Code,¹²² "any person claiming to be aggrieved" by the governing body's decision upon the approval of a subdivision map could bring an action to challenge that decision. However, many cases held that municipal taxpayers or county taxpayers had no standing to challenge the approval of a subdivision map because they were not aggrieved to any greater extent than the general public.¹²³ The current version of Section 11525.1 of the California Business and Professions Code¹²⁴ allows "any person" to maintain an action to challenge the decision. No reported cases have ruled on the point that the deletion of the phrase "claiming to be aggrieved" resulted in the granting of standing to any taxpayer in the state to bring such action. Nevertheless, it has been recognized that a taxpayer has the right to sue in a representative capacity in the event of fraud, collusion, ultra vires, or a failure on the part of

control premature recreational subdivisions, one is required for effective overall land use planning. See text accompanying notes 83-84, *supra*.

¹¹⁸ See note 46, *supra*.

¹¹⁹ CAL. BUS. & PROF. CODE § 11526.1(a) added by Cal. Stats., 1971, ch. 1446, § 4, at — (West Cal. Leg. Serv. 1971) (corresponds to A.B. 1301, 1971 Leg., Reg. Sess. § 4 (1971)).

¹²⁰ *Id.* § 11549.5(a) added by Cal. Stats., 1971, ch. 1446, § 7, at — (West Cal. Leg. Serv. 1971) (corresponds to A.B. 1301, 1971 Leg., Reg. Sess. § 7 (1971)).

¹²¹ This provision would be similar to the one contained in the 1971 Legislature's Assembly Bill 1301. See text accompanying note 67, *supra*.

¹²² CAL. BUS. & PROF. CODE § 11525 (West 1964), as amended, CAL. BUS. & PROF. CODE § 11525.1 (West Supp. 1971).

¹²³ See, e.g., *Wine v. Council of City of Los Angeles*, 177 Cal. App. 2d 157, 2 Cal. Rptr. 94 (1960).

¹²⁴ CAL. BUS. & PROF. CODE § 11525.1 (West Supp. 1971).

a government body to perform a duty specifically enjoined.¹²⁵ The recommended provision would clear up any doubts that still might exist on the issue of whether an individual has standing to challenge the approval of a subdivision map that violates provisions of the Subdivision Map Act.

CONCLUSION

The 1971 California Legislature has taken another step towards the control of premature subdivisions with its passage of Assembly Bills 1301 and 1303. Although Assembly Bill 1303 was vetoed, Assembly Bill 1301 provided for some measure of location control of subdivisions. However, it did not provide for control over the timing of the creation of subdivisions. This must be included in subdivision control legislation if it is to be truly effective. Additionally, the possibility of local governments abusing the general plan amendment procedure is not adequately dealt with by the present laws. There are too few incentives for a local government to adopt general plans, and a question remains as to the standing requirements to challenge the approval of subdivision maps.

Effective timing control over the creation of new subdivisions can be achieved by requiring population and single family dwelling unit projections to be part of the land use element of the general plan. Additionally, requirements of consistency with state projections will curb amendment abuses. The withholding of state funds will stimulate local governments into complying with minimum planning standards. Furthermore, the granting of standing to all residents and property owners in the state to challenge the illegal approval of subdivision maps will avoid the standing problems experienced under the former version of the California Business and Professions Code.¹²⁶

Immediate legislative attention and gubernatorial support along the lines of this proposal are needed before greedy land developers discover the loopholes in the present law and continue to carve up rural California for their own selfish gain.

Chilton H. Lee

¹²⁵ *Schaefer v. Berinstein*, 140 Cal. App. 2d 278, 289, 295 P.2d 113, 121 (1956).

¹²⁶ CAL. BUS. & PROF. CODE § 11525 (West 1964), as amended, CAL. BUS. & PROF. CODE § 11525.1 (West Supp. 1971).